

Message Text

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PAGE 01 BRUSSE 10059 071951Z

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ACTION SS-15

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SUBJECT: BRIBERY OF FOREIGN OFFICIALS BY U.S. FIRMS OPERATING
ABROAD

REF: (A) STATE 258169; (B) STATE 255260

1. SUMMARY: APPLICABLE PORTION OF BELGIAN CRIMINAL CODE RE
BRIBERY IS CONTAINED IN PARAS 246-253. THOSE PERSONS WHO
ATTEMPT TO BRIBE OR SUCCEED IN BRIBING OFFICIALS ARE, IN
GENERAL, SUBJECT TO SAME PUNISHMENT AS THE OFFICIALS THEMSELVES
(PARA 252). MINISTERIAL REponsibility IS NOT SET DOWN IN
APPROPRIATE LAW, AND QUESTION IS STILL UNDER STUDY ALTHOUGH
PARLIAMENT HAS DRAFT LEGISLATION BEFOR IT. BAUDRIN (RTT)
AND PEPERMANS (ITT) CASES SERVED FOCUS ATTENTION, AND PRIME
MINISTER IN EFFECT ADMITTED TO WEAKNESS IN
LEGISLATION AS CONCERNS INFLUENCE PEDDLING. END SUMMARY.

2. CHAPTER 4, PARAGRAPHS 246-253, OF BELGIAN CRIMINAL CODE
DEALS WITH CORRUPTION WITHIN BELGIAN CIVIL SERVICE.

3. UNDER PARAGRAPH 246, CIVIL SERVANT WOULD BE SUBJECT TO
FINE AND IMPRISONMENT OF FROM EIGHT DAYS TO SIX MONTHS IF HE
WERE PROMISED OR ACCEPTED GIFTS TO UNDERTAKE AN ACTION
WHICH IS WITHIN NORMAL EXERCISE OF HIS DUTIES. IF HE
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PAGE 02 BRUSSE 10059 071951Z

SHOULD AGREE TO COMMIT UNJUST ACT OR IF HE AGREES TO

ABSTAIN FROM FULFILLING HIS DUTIES IN ORDER TO RECEIVE GIFTS OR PRESENTS, HE WOULD BE SUBJECT TO FINE AND IMPRISONMENT OF FROM ONE MONTH TO A YEAR.

4. UNDER PARAGRAPH 247, IF CIVIL SERVANT DOES, IN FACT, COMMIT UNJUST ACT OR FAILS TO FULFILL HIS DUTIES BECAUSE HE WAS PROMISED OR RECEIVED GIFTS, HE WOULD BE SUBJECT TO FINE AND IMPRISONMENT OF FROM THREE MONTHS TO THREE YEARS.

5. UNDER PARAGRAPH 248, IF IN THE EXERCISE OF HIS DUTIES HE COMMITS A CRIME OR A MISDEMEANOR FOLLOWING PROMISES OR RECEIPT OF GIFTS , HE IS LIABLE TO FINE AND IMPRISONMENT OF FROM ONE TO FIVE YEARS.

6. PARAGRAPHS 249, 250 AND 251 DEAL WITH CORRUPTION WITHIN THE COURTS AND LEGAL SYSTEM. HOWEVER, PARAGRAPH 252 CONCERNS THOSE AGENTS WHO, BY MEANS OF PROMISES, OFFERS, GIFTS OR PRESENTS, OR BY THREATS OF ACTS OF VIOLENCE, CORRUPT A CIVIL SERVANT IN ORDER TO OBTAIN AN ACTION WITHIN SCOPE OF CIVIL SERVANT'S DUTIES OR THE FAILURE TO UNDERTAKE AN ACTION FALLING WITHIN HIS DUTIES, WILL BE SUBJECT TO THE SAME PUNISHMENT AS THAT PROVIDED FOR UNDER PREVIOUS ARTICLES AFFECTING CIVIL SERVANTS THEMSELVES. ATTEMPTS TO CURRUPT ARE PUNISHABLY BY FINES AND IMPRISONMENT OF FROM EIGHT DAYS TO ONE YEAR.

7. UNDER PARAGRAPH 253, ALL GIFTS ARE NOT TO BE RETURNED TO AGENT OFFERING BRIBES BUT ARE SUBJECT TO CONFISCATION AND ARE TO BE PUT TO BENEFIT OF COMMUNE WHERE CRIME HAD BEEN COMMITTED. WHILE CRIMINAL CODE AS NOTED ABOVE APPLIES TO ALL LEVELS OF CIVIL SERVICE, APPLICABILITY TO MINISTERS IS LESS CLEAR.

8. BELGIN GOVERNMENT IS CURRENTLY ATTEMPTING TO DEFINE MINISTERIAL REPONSIBILITY. THE BELGIAN CONSTITUTION UNDER ARTICLE 90, LINE 2, STATES, QUOTE A ALW SHALL DEFINE RESPONSIBILITY, THE PUNISHMENT TO BE APPLIED AGAINST MINISTERS AND THE METHOD TO BE LIMITED OFFICIAL USE

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PAGE 03 BRUSSE 10059 071951Z

USED TO TAKE ACTION AGAINST THEM, EITHER BY CHARGES ACCEPTED BY THE CHAMBER OF REPRESENTATIVES OR BY LEGAL ACTION TAKEN BY INJURED PARTIES. UNQUOTE. A TEMPORARY MEASURE WAS INCORPORATED INTO CONSTITUTION BY NATIONAL CONGRESS WHICH GAVE TO CHAMBER OF REPRESENTATIVES DISCRETIONARY POWER TO CHARGE A MINISTER. DESPITE PROVISIONS OF CONSTITUTION, NO LAW HAS EVER BEEN PASSED SETTING FORTH MINISTERIAL RESPONSIBILITY. A BILL

PRESENTED IN 1971, FOR EXAMPLE, ATTEMPTED TO SET DOWN CRIMES FOR WHICH A MINISTER WOULD BE RESPONSIBLE AND INCLUDED AMONG THIS LIST THE RECEIPT OF MATERIAL ADVANTAGES, EITHER DIRECTLY OR THROUGH OTHER PARTIES, AND WOULD HAVE MADE ILLEGAL ANY FAVORITISM FOR AN INDIVIDUAL OR CORPORATION BY ILLICIT ACTS.

9. THE BELGIAN GOVERNMENT HAS NOW ONCE AGAIN PUT FORWARD A DRAFT LAW WHICH IS BEFORE PARLIAMENT. ONE MAJOR DIFFICULTY CONCERNS QUESTION OF WHETHER MINISTERS AND SECRETARIES OF STATE WOULD SIMPLY BE SUBJECT TO CRIMINAL CODE. IN PRESENTATION BEFORE CHAMBER OF REPRESENTATIVES, PRIME MINISTER TINDEMANS IN HIS REPORT ON NEW BILL ON MINISTERIAL RESPONSIBILITY POSES QUESTION IF CRIMINAL CODE DOES NOT CONTAIN CERTAIN WEAKNESSES PARTICULARLY IN FIELD OF CORRUPTION AND INFLUENCE PEDDLING. IN HIS REPORT ON THE BILL (651, NO. 1, P. 4) TINDEMANS STATED THAT THIS QUESTION WAS STILL UNDER STUDY.

10. MAJOR SCANDALS INVOLVING BELGIAN CIVIL SERVANTS HAVE BEEN VERY RARE EVEN THOUGH THERE IS SIDESPREAD POPULAR SUSPICION THAT GOVERNMENT OFFICIALS ARE NOT IMMUNE FROM CORRUPTION. RECENT CASE OF SOME NOTORIETY INVOLVING DIRECTOR GENERAL OF RTT (STATE TELEPHONE COMPANY) GERMAIN BAUDRIN AND FRANK PEPERMANS, PRESIDENT OF BELL TELEPHONE MANUFACTURING COMPANY (ITT BELGIAN SUBSIDIARY) SERVED REINFORCE THIS SUSPICION. BAUDRIN IS CURRENTLY APPEALING HIS CONVICTION FOR CORRUPTION FOR ACCEPTING SIZABLE GIFTS (ALLEGEDLY BF 25,000,000), FROM VARIOUS SOURCES INCLUDING ITT. PEPERMANS WAS FOUND GUILTY OF BRIBERY OF PUBLIC OFFICIAL AND IS AWAITING SENTENCING.

11. COMMENT: EXAMINATION OF LITERATURE ON BELGIAN LIMITED OFFICIAL USE

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PAGE 04 BRUSSE 10059 071951Z

CIVIL SERVICE AND ON LEGISLATIVE HISTORY IS INSTRUCTIVE. OFFICIAL VIEW SEEMS TO HAVE BEEN THAT NEED FOR SPECIAL LEGISLATION AS CONCERNS TOP OFFICIALS OF MINISTERIAL RANK WAS NOT PROVEN BUT THAT, BECAUSE OF INVOLVEMENT IN VARIOUS DISPUTES SUCH AS AUTOMOBILE ACCIDENTS NEW LAW WAS POSSIBLY NECESSARY FOR FUTURE. MINISTERIAL CORRUPTION IS BARELY HINTED AT. BAUDRIN CASE AND PROBABLY SOME FASCINATION WITH U.S. WATERGATE EXPERIENCE, ALONG WITH ITT SCANDALS, HAVE DRAWN ATTENTION TO ISSUE OF CORRUPTION. BELGIAN PENCHANT FOR COMPROMISE AND QUOTE ARRANGEMENT UNQUOTE PLUS TOLERANT VIEW OF PRACTICE OF PROVIDING FAVORS IS WORKING AGAINST ANY STRICT APPLICATION OF ANTI-BRIBERY LAWS AT ALL LEVELS. FIRESTONE

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